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ABSTRACT

This brief paper summarizes requirements of the Americans with Disabilities Act (ADA) of 1990 related to workplace accommodations for persons with musculo-skeletal disorders. The following topics are addressed: (1) the relevance of the ADA to people with musculo-skeletal disorders; (2) employment provisions of the ADA to protect individuals with such disabilities during the job application process (including prohibition of questions regarding an applicant's medical history); (3) what is meant by "reasonable accommodation" under the law; (4) examples of accommodations for people with musculo-skeletal disorders, including engineering and administrative accommodations; (5) relevance of the law to employees returning to work after a workers' compensation situation; (6) ways to maximize the employee's potential for success; and (7) long-term financial and other advantages to the employer of compliance with the ADA. A listing of eight resources is provided. (DB)

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WORKPLACE ACCOMMODATIONS FOR PERSONS WITH MUSCULO-SKELETAL DISORDERS

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Any disease, injury, or significant impairment to muscles, bones, joints, and supporting connective (soft) tissues is considered to be a musculoskeletal disorder. Approximately 14 million Americans have musculoskeletal disorders, which are the leading cause of disability among individuals of working age (18 to 64 years of age). The total cost to society of musculoskeletal disorders exceeds $65 billion annually, of which $27.5 billion alone is for musculoskeletal injuries.

Many people with musculoskeletal disorders are considered individuals with disabilities under the Americans with Disabilities Act (ADA). An individual with a disability is a person who: has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Whether a person's impairment substantially limits a major life activity depends on its nature and severity, how long it will last or is expected to last, and its permanent or long-term impact or expected impact.

Musculoskeletal disorders vary greatly in severity and degree of permanence. The provisions of the Americans with Disabilities Act of 1990 (ADA) do not apply to every musculoskeletal disorder. The ADA does not cover physical problems that are relatively minimal in nature and severity (e.g., a sprained toe or pulled muscle) or will heal in a short time.

Job Application Process

Before the passage of the ADA, some employers attempted to screen out persons with disabilities during the hiring process out of fear that these people represented an undue safety and workers' compensation risk. Employers used preplacement medical examinations to identify the particular disability the applicant had and then used this information to make a hiring decision. The trouble with this approach was that the candidate had no chance to show the employer whether he could actually perform the job.

The employment provisions of the ADA (Title I) protect all qualified individuals with disabilities from discrimination in all employment decisions. Specifically, employers may not inquire about an applicant's medical history before making a conditional offer of employment. After the job offer is made, an employer may inquire about a prospective employee's medical history or require medical examinations as long as this policy is applied consistently to all entering employees in a particular job category. All medical information collected is confidential and must be kept in a separate locked file. The employer cannot assume that the applicant is limited in performing the job's essential functions merely because he has a disability. If the postoffer inquiry shows that the prospective employee will be unable to perform the job without posing a significant risk of harm to himself or others, the employer may refuse to hire the

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applicant if the risk cannot be reduced or eliminated by *reasonable accommodation.*

What Is Reasonable Accommodation?

Reasonable accommodation is the critical concept in the employment provisions (Title I) of the ADA. It is any modification or adjustment to a job, employment practice, or work environment that enables a qualified individual with a disability to participate in and enjoy equal employment opportunity. The employer's obligation to provide a reasonable accommodation applies to all aspects of employment; this duty is ongoing and may arise anytime a person's disability or job changes, unless the accommodation causes an undue hardship to the employer. A qualified applicant or employee cannot be denied an employment opportunity because of the need to provide reasonable accommodation.

According to the ADA, if the cost of an accommodation would impose an undue hardship on the employer, the individual with the disability should be given the opportunity to provide the accommodation or to pay the portion of the cost that would otherwise constitute an undue hardship for the employer.

What Types of Accommodations Should Be Considered?

Workplace changes for people with musculoskeletal disabilities fall into two general categories: engineering accommodations and administrative accommodations.

Engineering accommodations include changes to the physical work environment such as

- redesign of employees' workstations
- redesign of equipment or tools (e.g., lifting aids) that employees use
- access to the building in which employees work

Administrative accommodations include changes in the manner in which work is performed such as

- assignment of other employees to assist disabled workers
- reassignment of disabled employees to alternate vacant positions
- flexibility of the work schedule

Employers may wish to consult with technical experts such as ergonomists and physical therapists regarding workplace accommodations . They should not, however, exclude employees with musculoskeletal disorders from the decision-making process concerning their own accommodations. Allowing an individual with a disability to help set up her workstation or determine her style of work will assure more effective selection of reasonable accommodations and help promote increased job performance and respect for the employer.

Returning the Work-Disabled Employee to the Job

Providing reasonable accommodations to individuals with disabilities applies not only to the hiring process but also to employees who are returning to work after a workers' compensation situation. The individual with a disability is expected to perform the essential functions of the job. These functions may be considered essential for several reasons: (i) the position exists so that function can be performed; (ii) a limited number of employees are available among whom the performance of the job function can be distributed; (iii) the function is highly specialized so that the incumbent in the position is hired for her expertise or ability to perform it. The individual with a disability does not need to be able to perform the nonessential functions of the job. If the employee is otherwise qualified to perform a job but requires a reasonable accommodation to accomplish an essential job function, she cannot be discriminated against in being hired or in returning to work. Employers are not required to hire or retain individuals who pose a direct threat to the health and safety of himself/herself or others. The employer has an obligation to prove that a direct threat exists and that the threat cannot be eliminated or reduced to an acceptable level through reasonable accommodation.

Maximizing Employee Potential for Success

As with any significant change in the work environment, making job site accommodations for a disabled employee may have implications for effective labor relations.. For example, an assembly-line worker with a low-back disability is reintroduced into the workplace following a job-related injury. He is able to return to his job because of modifications to his workstation that ease the physical demands of the job and help to control his symptoms. Other employees with the same job title or union seniority, however, may want similar changes to their work stations to make their jobs easier.

The employer may feel this is a no-win situation. Not only does she have to pay for the disabled employee's accommodation, she also has to face the backlash from other workers who consider the accommodations a form of favoritism to which they are not entitled. But making this type of accommodation for the entire workforce would be cost prohibitive, and the employer is not required to accommodate the wishes of the disgruntled able-bodied workers.

Able-bodied employees must understand that the accommodation enables the employee with a disability to perform the essential functions of his job. If accommodations are viewed in this context, there is no appropriate comparison between providing an accommodation and making adjustments for able-bodied workers so as to make their jobs easier. One is required by law, the other is not.

If the dialogue between labor and management concerning the need for accommodating the individual with a disability is handled properly, other employees will come to understand that different people can perform the same job in different ways. By working closely with labor to ease the assimilation of individuals with disabilities back into the workplace, employers can establish mutual feelings of understanding and a desire to work together to resolve future conflicts. Employers may wish to consult experts in the field of labor relations and the ADA to learn how to handle these situations.

Beyond the ADA

Understandably, employers worry about the impact of the ADA on the cost of doing business. In most cases, however, accommodating a worker costs less than disability compensation does. Employers, in fact, have much to gain by investing in ergonomic redesigns to the entire workplace that go beyond the intent of the ADA. It has been estimated, for example, that the proper design of manual handling tasks can reduce by up to one-third the incidence of industrial back disorders. In fulfilling the requirements of the ADA for employment nondiscrimination for individuals with disabilities, the employment setting is encouraged to refine its protocol for determining essential functions of jobs; matching individuals to jobs, emphasizing employee skills and abilities, not limitations; and design work stations and environments that minimize the likelihood of injury. These are outcomes that both employers and employees can benefit from.

Resources

If you have more specific questions about the ADA or musculoskeletal disorders, please consult the resources listed below.

ADA Regional Disability and Business Technical Assistance Center: 1-800-949-4232 (voice/TTY)

Equal Employment Opportunity Commission: 1801 L Street, NW, Washington, D.C. 20507, 800-669-4000 (voice) to reach EEOC field offices; for publications call 800-800-3302 or 800-669-EEOC (voice/TTY).

Job Accommodation Network (JAN), West Virginia University, P.O. Box 6080, Morgantown, West Virginia 26506-6080, telephone 800-526-7234

University of Vermont, **Vermont Rehabilitation Engineering Center,** McClure Musculoskeletal Research Center, One South Prospect Street, Burlington, Vermont 05401, telephone 800-527-7320, from within Vermont telephone 802-656-4582

Human Factors and Ergonomics Society, P.O. Box 1309, Santa Monica, California 90406, telephone 310-394-1811, fax 310-394-2410 (Fax)

American Physical Therapy Association, Orthopedic Section, 505 King Street, Suite 103, Lacross, Wisconsin 54601-4062, telephone 608-784-0910

University of Rochester, Center for Occupational Rehabilitation, 2337 Clinton Avenue South, Rochester, New York 14618, telephone 716-275-9675

McClure Musculoskeletal Research Center, Stafford Hall, University of Vermont, Burlington, Vermont 05405, telephone 802-656-2250

This publication was developed by Frank N. Morosky, M.S., P.T., a physical therapist and specialist in industrial rehabilitation. He is currently coordinator of the Cornell University Back Injury Prevention Program, Ithaca, New York.

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Cornell University is authorized by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the Americans with Disabilities Act (ADA). However, you should be aware that NIDRR is not responsible for enforcement of the ADA. The information, material, and/or technical assistance is intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the Act, nor binding on any agency with enforcement responsibility under the ADA.

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OTHER TITLES IN THIS *IMPLEMENTING THE ADA* SERIES ARE:

Working Effectively with People who are Deaf or Hard of Hearing
Working Effectively with People who are Blind or Visually Impaired
Working Effectively with Persons who have Cognitive Disabilities
Workplace Accommodations for Persons with Musculoskeletal Disorders
Working Effectively with Employees who have Sustained a Brain Injury
Employing and Accommodating Workers with Psychiatric Disabilities
Employing and Accommodating Individuals with Histories of Alcohol and Drug Abuse
Employment Considerations for People who have Diabetes
Accommodating the Allergic Employee in the Workplace
Causes of Poor Indoor Air Quality and What You Can Do About It
Working Effectively with People with Learning Disabilities
Working Effectively with Individuals who are HIV-Positive

These and other informational brochures can be accessed on the World Wide Web at:
www.ilr.cornell.edu/ped/ada

For further information about publications such as these, contact the ILR Program on Employment and Disability, Cornell University, 102 ILR Extension, Ithaca, New York 14853-3901; or at ***607/255-2906*** *(Voice),* ***607/255-2891*** *(TTY), or* ***607/255-2763*** *(Fax).*

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